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OFFICE OF PETITIONS

PTO/SB/64 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
HIM-PT009.1

First named inventor: Richard B. Himmelstein

Application No.: 09/666,725

Art Unit: 3621

Filed: September 20, 2000

Examiner: Firmin Backer

Title: ELECTRONIC REAL ESTATE BARTERING SYSTEM

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX: (703) 308-6916NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.The above-identified application became abandoned for failure to file a timely and proper reply to a  
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the  
expiration date of the period set for reply in the Office notice or action plus an extensions of time  
actually obtained.

## APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

☒ Small entity-fee \$ 650. (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ (37 CFR 1.17(m))

## 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in  
the form of Reply Pursuant to 37 C.F.R. 1.111

(identify type of reply):

- ☐
- has been filed previously on \_\_\_\_\_
- 
- ☒
- is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

- ☐
- has been paid previously on \_\_\_\_\_
- 
- ☐
- is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and pay the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

09/09/2003 09666725 650.00 OP  
01 FC:2453

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SEP 10 2003

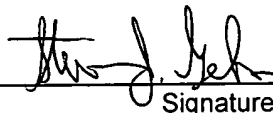
## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

9/4/2003  
Date

  
Signature

Telephone  
Number: 215-568-6400

STEVEN J. GELMAN

Typed or printed name

Volpe and Koenig, P.C.

United Plaza, Suite 1600

Address

30 South 17th Street

Philadelphia, PA 19103

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: Statement Re: Unintentional Abandonment with Exhibits A-E

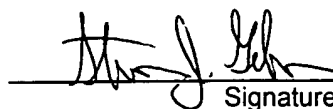
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

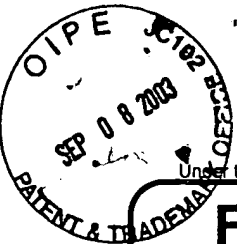
☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

September 4, 2003  
Date

  
Signature

STEVEN J. GELMAN

Type or printed name of person signing certificate



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SEP 10 3

OFFICE OF PETITIONS

PTO/SB/17 (05-03)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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# FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 650.00

Complete if Known

Application Number	09/666,725
Filing Date	September 20, 2000
First Named Inventor	Richard B. Himmelstein
Examiner Name	Firmin Backer
Art Unit	3621
Attorney Docket No.	HIM-PT009.1

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit  
Account  
Number  
Deposit  
Account  
Name

22-0493

Volpe and Koenig, P.C.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments charge any deficiencies  
☒ Charge any additional fee(s) during the pendency of this application  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing fee	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below		Fee Paid
Independent	Multiple Dependent					

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	84	2201	42	Independent claims in excess of 3
1203	280	2203	140	Multiple dependent claim, if not paid
1204	84	2204	42	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

\*\*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	650.00
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 650.00

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	STEVEN J. GELMAN	Registration No. (Attorney/Agent)	41,034	Telephone	215-568-6400
Signature		Date	September 4, 2003		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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SEP 10 2003

OFFICE OF PETITIONS

In the **PATENT APPLICATION** of:

Richard B. Himmelstein

**Application No.:** 09/666,725

**Confirmation No.:** 6238

**Filed:** September 20, 2000

**For:** ELECTRONIC REAL ESTATE  
BARTERING SYSTEM

**Group:** 3621

**Examiner:** Firmin Backer

**Our File:** HIM-PT009.1

**Date:** September 4, 2003

**STATEMENT ACCOMPANYING PETITION TO REVIVE AN  
UNINTENTIONALLY ABANDONED APPLICATION  
PURSUANT TO 37 C.F.R. §1.137(b)**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests that the above-identified patent application be revived. Pursuant to 37 C.F.R. §1.137(b), Applicant is submitting herewith:

1. A Reply to the outstanding Office Action dated February 12, 2003;
2. The petition fee of \$650, as set forth in 37 C.F.R. §1.17(m); and

3. The following statement of facts showing that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unintentional.

### **STATEMENT OF FACTS**

1. The present application was filed by the firm of Volpe and Koenig, P.C. (hereinafter "the firm") on September 20, 2000.

2. The firm received two electronic mail ("e-mail") messages from the Applicant on August 28, 2002 informing the firm that the prosecution of the present application was to be undertaken by different counsel, Jeff Brandt. (Copies of these e-mails are attached as Exhibit A.)

3. In an e-mail exchange on September 4, 2002, Applicant advised the firm to maintain its files, but to forward any correspondence received on the file to the new counsel. (Copies of these e-mails are attached as Exhibit B.)

4. Per the firm's standard operating procedures, the Applicant was informed (via an October 29, 2002 letter, attached as Exhibit C) that the firm's file relating to the present application had been closed.

5. The firm did not receive the Office Action dated February 12, 2003.

6. On August 22, 2003, Applicant informed the firm via e-mail that an Office Action had been issued in connection with the present application, and that

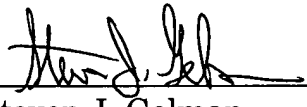
**Applicant:** Richard B. Himmelstein  
**Application No.:** 09/666,725

Applicant's new counsel had not received the Office Action. (A copy of this e-mail is attached as Exhibit D.)

7. On August 22, 2003, Jeff Brandt received a facsimile copy of the outstanding Office Action. This copy of the Office Action was forwarded to the firm by the Applicant on August 26, 2003. (A copy of the fax cover sheet accompanying the Office Action, indicating both facsimile dates is attached as Exhibit E.)

Respectfully submitted,

Richard B. Himmelstein

By   
Steven J. Gelman  
Registration No. 41,034  
(215) 568-6400

Volpe and Koenig, P.C.  
United Plaza, Suite 1600  
30 South 17th Street  
Philadelphia, PA 19103

SJG/  
Enclosures (7)



RBHIMMELST@aol.com

08/28/2002 03:36 PM

To: gbh@volpe-koenig.com  
Subject: Fwd: Barter Securities Cases

I'm referring to your file No. HIM-PT009\_1

Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

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AM/PM

AUG 28 2002

VOLPE & KOENIG, P.C.

----- Message from RBHIMMELST@aol.com on Wed, 28 Aug 2002 15:34:21 EDT -----

To: gbh@volpe-koenig.com

Subject Fwd: Barter Securities  
: Cases

Hope all is well. Because of continuity, I am hereby requesting Jeff Brandt to handle the prosecution of this case. I would like you to retain your files until further notice (i.e., I may be filing continuations with you).

Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Wed, 28 Aug 2002 15:26:42 -0400 -----

To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein" <rbhimmelst@aol.com>

Subject Barter Securities Cases

KAZIMI HANI M (703) 305-1061 P/3624 (703) 308-5357

Today, literally as I clicked thru to the pto web page to look up Examiner Kazimi's contact info, he phoned to introduce himself.

He is gathering all the cases. It will take him a few weeks to get them together.

He can examine the 1999 and 2000 cases (the real estate and first barter case). He can examine continuation cases (which should include our 2001 cases - he will look at them and let me know). The last-filed case may need a petition to make special before he can pick it up out of sequence.

He was very positive about an interview when he starts to examine the cases. He indicated we could talk about setting one up when he gets the cases together.

Overall, it was a good call.

EXHIBIT A

Regards, Jeff

Jeffrey L. Brandt  
Intellectual Property & Licensing  
17 Old Pierce Road  
Ridgefield, CT 06877  
tel: 203.438.1077  
fax: 866.422.4530  
cell: 203.300.1592  
jbrandt@axiomlegal.net

\*\*\*\*\*  
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immediately by e-mail and delete the original message.  
\*\*\*\*\*





RBHIMMELST@a i.c  
m

08/28/2002 03:34 PM

To: gbh@volpe-koenig.com  
Subject: Fwd: Barter Securities Cases

HIM-PT009.1

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Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

RECEIVED

AM/PM

AUG 28 2002

VOLPE & KOENIG, P.C.

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To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein"  
<rbhimmelst@aol.com>

Subject Barter Securities Cases

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KAZIMI HANI M (703)305-1061 P/3624 (703)308-5357

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Regards, Jeff

Jeffrey L. Brandt  
Intellectual Property & Licensing  
17 Old Pierce Road  
Ridgefield, CT 06877  
tel: 203.438.1077  
fax: 866.422.4530  
cell: 203.300.1592  
jbrandt@axiomlegal.net

\*\*\*\*\*

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immediately by e-mail and delete the original message.  
\*\*\*\*\*

Jay Halt

09/04/2002 03:38 PM

To: RBHIMMELST@aol.com  
Subject: Re: Barter Securities Cases

Richard,

We will close the physical file, and keep it in our closed file section. We will take the HIM-PT005.1 file off of our docket.

Regards,  
Jay

Gerald B. Halt Jr., Attorney at Law

Telephone: +1-215-568-6400 Ext.103  
Facsimile: +1-215-568-6499  
E-Mail: gbh@volpe-koenig.com

RBHIMMELST@aol.com



RBHIMMELST@aol.co  
m

09/04/2002 03:01 PM

To: gbh@volpe-koenig.com  
cc:  
Subject: Re: Barter Securities Cases

He doesn't need anything. Please maintain your file and if you get any new responses from the USPTO office, forward them to him.

Regarding HIM-PT005.1, please get a quote for doing the formal drawings (and I will do likewise from a different source). I actually thought your source was high last time.

Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

**EXHIBIT B**

Jay Halt

09/04/2002 03:00 PM

To: RBHIMMELST@aol.com  
Subject: Re: Fwd: Barter Securities Cases

Thanks Richard.

Do you want me to send him the file, (or a copy of the file), as we did for BarterSecurities? Please advise.

I hope all is well with you and your family!

Regards,  
Jay

Gerald B. Halt Jr., Attorney at Law

Telephone: +1-215-568-6400 Ext.103

Facsimile: +1-215-568-6499

E-Mail: gbh@volpe-koenig.com

RBHIMMELST@aol.com



RBHIMMELST@aol.co  
m

08/28/2002 03:36 PM

To: gbh@volpe-koenig.com  
cc:  
Subject: Fwd: Barter Securities Cases

I'm referring to your file No. HIM-PT009\_1

Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

----- Message from RBHIMMELST@aol.com on Wed, 28 Aug 2002 15:34:21 EDT -----

To: gbh@volpe-koenig.com  
Subject Fwd: Barter Securities  
: Cases

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Regards,

Richard Himmelstein  
857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Wed, 28 Aug 2002 15:26:42 -0400

**To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein" <rbhimmelst@aol.com>**

**Subject Barter Securities Cases**

KAZIMI HANI M (703) 305-1061 P/3624 (703) 308-5357

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Regards, Jeff

Jeffrey L. Brandt  
Intellectual Property & Licensing  
17 Old Pierce Road  
Ridgefield, CT 06877  
tel: 203.438.1077  
fax: 866.422.4530  
cell: 203.300.1592  
jbrandt@axiomlegal.net

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\*\*\*\*\*



Suite 400, One Penn Center  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103

Telephone: +1-215-568-6400  
Facsimile: +1-215-568-6499  
www.vlpe-koenig.c m

---

BRINGING LAW TO YOUR IDEAS

---

Gerald B. Halt, Jr.  
gbh@volpe-koenig.com

October 29, 2002

Mr. Richard B. Himmelstein  
857 Fort Fisher Boulevard South  
Kure Beach, NC 28449

Re: File: HIM-PT009.1  
U.S. Patent Appln. No. 09/666,725  
*ELECTRONIC REAL ESTATE BARTERING SYSTEM*

Dear Richard:

Per our recent conversation, we have closed this file and removed the matter from our docket and follow-up systems. With the transfer and closing of the file, we have no further responsibility for this matter. Accordingly, our physical file will be destroyed in **December 2008**. If the above course of conduct is in any way inconsistent with your wishes, please advise us immediately.

Very truly yours,

Volpe and Koenig, P.C.

By   
Gerald B. Halt, Jr.

GBH/srs

**EXHIBIT C**

Patents

Trademarks

Copyrights


Trade Secrets

Litigation

Licensing

Jay Halt

08/22/2003 01:13 PM

To: RBHIMMELST@aol.com  
cc: jbrandt@axiomlegal.com, (bcc: Katie Gehringer/Volpe-Koenig)  
Subject: HIM-PT009.1 

Richard/Jeff,

We have not received anything for this case. That was not unexpected since we closed our file and removed it from our docketing and follow up systems subsequent to the transfer of the file last October. I could check into it, but since we should no longer be attorneys of record for the case, we may be unable to get any information.

It may be advisable for Jeff to check into it, and if he doesn't get anywhere, we could then contact the PTO. Is that alright with you Jeff? Please advise.

Thanks,  
Jay

RBHIMMELST@aol.com



RBHIMMELST@aol.co  
m

08/22/2003 10:38 AM

To: gbh@volpe-koenig.com  
cc: jbrandt@axiomlegal.com  
Subject: Fwd: Barter Securities

Jay--

Apparently there was an office action on the Barter Real Estate case in February 2003 and now the examiner says it is going abandoned. Both M&F and Jeff Brandt say it was never transferred to them. Do you know what's up with it?

Please feel free to call Jeff directly and let me know what's going on as well.

Regards,

### Richard B. Himmelstein

857 Fort Fisher Blvd. South.  
Kure Beach, NC 28449  
910/458-4797 - phone  
rbhimmelst@aol.com

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Fri, 22 Aug 2003 10:29:01 -0400 -----

To: "Daniel Sheridan" <dsheridan@morganfinnegan.com>, "Richard Himmelstein"  
<RBHIMMELST@aol.com>

cc: "Walt Hanchuk" <wghanchuk@morganfinnegan.com>

Subject Barter Securities

:

Daniel - Per Barter's direction, please do the EPO filing on the 4159-4005PC application leaving all the claims intact (estimate of \$9500-10,500).

**EXHIBIT D**

I agree my records show the 'real estate' case 09/666,725 remained with the Volpe firm.

Thanks! Jeff

Jeffrey L. Brandt

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\*\*\*\*\*

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001



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# Fax Cover Sheet

Date: 22 Aug 2003

To: Jeff Brandt	From: Firmin Backer
Application/Control Number: 09/666,725	Art Unit: 3621
Fax No.: 866-422-4530	Phone No.: (703) 305-0624
Voice No.: 215-588-6400	Return Fax No.: (703) 305-7687
Re:	CC:
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> For Comment <input type="checkbox"/> For Reply <input checked="" type="checkbox"/> Per Your Request	

Comments:

Number of pages 8 including this page

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EXHIBIT E

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002



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,725	09/20/2000	Richard B. Hirschelstein	HIM-PT009.1	6238

3624 7590 02/12/2003

VOLPE AND KOENIG, P.C.  
SUITE 400, ONE PENN CENTER  
1617 JOHN F. KENNEDY BOULEVARD  
PHILADELPHIA, PA 19103

EXAMINER

BACKER, FIRMIN

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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US PATENT OFFICE

003

<b>Office Action Summary</b>	<b>Application N .</b> 09/868,725	<b>Applicant(s)</b> HIMMELSTEIN, RICHARD B.	
	<b>Examiner</b> Firmin Backer	<b>Art Unit</b> 3621	

**- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 20 September 2000.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 20 September 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

This is in response to a letter for patent filed on September 20<sup>th</sup>, 2000 in which claim 1 is presented for examination. Claim 1 is pending in the letter.

#### *Claim Objections*

1. Claim 1 is objected to because of the following informalities: Applicant discloses "*the internet*" in paragraph 7 line 1. Applicant is advised to delete the word "*the*" in order to overcome Examiner's objection. Appropriate correction is required.
2. Claim 1 is objected to because of the following informalities: Applicant discloses "*such a*" in paragraph 4 line 5. Applicant is advised to delete the word "*such*" in order to overcome Examiner's objection. Appropriate correction is required.

#### *Double Patenting*

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The

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filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claim 1 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 09/921,534. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Minton (U.S. PG Pub 2002/0091611 A1).

7. As per claim 1, Minton teaches a bartering system for implementing barter between a plurality of parties each having one or more classes of items available for barter (*data processing system (20) for allowing individual to buy and sell securities*) (see fig 1, 2, 3, page paragraph 0014) comprising means (*server, 316*) for creating a barter order (*buys and sell orders*) (fig 3, page 4 paragraph 0053) including means for designating a selected quantity (*quantity*) of a first class of items (*securities*) to be bartered (*to be traded*) (fig 3, page 4 paragraph 0053), means for

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designating a date range (*time*) for transferring title (*transmitting title*) of the selected quantity (*quantity of securities*) of the first class of items to be bartered whereby a barterer may elect to defer the transfer of title to the first class items to a time after the barter order is used to complete a barter transaction or elect to transfer title (*transmitting title*) along with the completion of such barter transaction (*see abstract, page 2 paragraph 0016, claim 16*), means for designating a barter value (*the price*) of the first class of items to be bartered (*fig 3, page 4 paragraph 0053*), and means for designating a second class of items (*securities*) to be acquired (*bought*) (*fig 3, page 4 paragraph 0053*) means for posting (*displaying order*) barter orders (*order to buy and sell*) via the internet (*public network*) to a barter database (*see figs 1, 3 page 4 paragraph 0055, 0056*), means for displaying (*display 96*) via the internet posted barter orders whose first class of items match the second class of items of a barterer's order (*see page 4 paragraph 0056*), and means for selecting (*matching and executing*) a posted barter order from the displaying means to effectuate a barter transaction which combines a barterer's barter order with the selected posted order (*paragraph 0057, 0069*).

#### Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. *Hawkins et al (6,247,000) teach method of matching a plurality of predetermined financial transactions for a plurality of users, wherein data for the plurality of predetermined financial transactions.*

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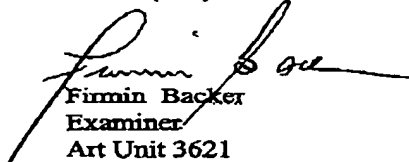
b. *Hawkins et al (U.S. Patent No. 6,029,146) teach a system and method for direct broker to broker trading that will automatically match an investor's security order with an executing broker's match confirmation and will automatically generate and route via the SWIFT Financial Network a settlement instruction to the investor's clearing agent.*

c. *Minton (U.S. Patent No. 6,014,643) teach a data processing system, and a network of data processing systems for allowing individuals to buy and sell securities directly from other individuals, with only minimal oversight by a broker.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Firmin Backer whose telephone number is (703) 305-0624. The examiner can normally be reached on Mon-Thu 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Firmin Backer  
Examiner  
Art Unit 3621

February 4, 2003

x

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.08(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office  
PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 3

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**Notice of References Cited**

Application/Control No.

09/888,725

Applicant(s)/Patent Under  
Reexamination  
HIMMELSTEIN, RICHARD B.

Examiner

Firmen Backer

Art Unit

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Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,202,051	03-2001	Woolston, Thomas G.	705/27
	B	US-6,085,176	07-2000	Woolston, Thomas G.	705/37
	C	US-2002/0091611	07-2002	MINTON, VERNON F.	705/37
	D	US-6,247,000	06-2001	Hawkins et al.	705/37
	E	US-6,014,643	01-2000	Minton, Vernon F.	705/37
	F	US-6,029,148	02-2000	Hawkins et al.	705/35
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)				
	U					
	V					
	W					
	X					

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Notice of References Cited

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AUG 26 2003

VOLPE &amp; KOENIG, P.C.